

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
WESTERN DIVISION

UNITED STATES OF AMERICA, ) Docket No. 3:10CR251  
Plaintiffs, ) Toledo, Ohio  
v. ) January 10, 2011  
HOR AND AMERA AKL, ) Bond Hearing  
Defendant. )

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TRANSCRIPT OF BOND HEARING  
BEFORE THE HONORABLE JAMES G. CARR  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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4 Proceedings recorded by mechanical stenography, transcript  
5 produced by notereading.  
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1           COURTROOM DEPUTY: Case number 3:10CR251 United  
2 States of America versus Akl. Matter called for a bond  
3 hearing.

4           THE COURT: Okay. Mr. Herdman?

5           MR. HERDMAN: Good morning, Your Honor. How are  
6 you?

7           THE COURT: And with you are?

8           MR. HERDMAN: Elisabeth Poteat, counter-terrorism  
9 section of U.S. Department of Justice, and Tom Getz.

10          MR. 6789: Sanford Schulman appearing on Amera.

11          MR. HELMICK: Jeff Helmick for Hor Akl; however  
12 we're here to implicate Mrs. Akl, and it's with the consent  
13 of her counsel.

14          THE COURT: Record should show that the  
15 defendants have requested that I modify intensely  
16 restrictive conditions of release to allow Mrs. Akl to  
17 visit with their children who are residing with Mr. Akl.  
18 As we all are well aware, I have as a condition of release  
19 required that the family -- the husband and wife, the  
20 co-defendants, not live or reside together. The request is  
21 that there be a five-hour window when both parents would be  
22 available with the children, at least two of whom are high  
23 school students.

24          MR. HELMICK: One in high school, Your Honor, one  
25 in elementary school, one preschool.

1           THE COURT: Okay. For some reason I thought the  
2 middle child was older and that the younger child was quite  
3 younger. The government imposes that request. Do you wish  
4 to be heard -- let me ask you, Mr. Helmick, do you wish to  
5 be heard further?

6           MR. HELMICK: If I would be heard, it would only  
7 be in response to their objection, which, as I understand  
8 it, the government has been consistent, we certainly  
9 understand their objection that the flight risk for either  
10 or both of these defendants goes up when the two of them --  
11 or if the two of them are together. And clearly that's  
12 part of what we're proposing. However, we're not talking  
13 about residing, we're talking about visitation. There  
14 would certainly be a court-approved custodian present  
15 during that period of time. Both can be on monitoring,  
16 they're already on monitoring, both can remain or be on  
17 monitoring, or we can even impose GPS monitoring if  
18 necessary. And this window of time -- Judge, without  
19 complicity, to put it quite bluntly, with a court-approved  
20 custodian, their escape, they're not going to be able to  
21 leave during this period of time. That risk may go up  
22 overnight when the custodian is asleep if the two of them  
23 are together in the same household and conspired to leave  
24 at the same time. But in order for it to occur during this  
25 window of time as we've proposed, which we think is a

1 reasonable accommodation under the circumstances, they  
2 would -- they would have to have involvement and complicity  
3 with court-approved custodian. They would have to have the  
4 resources available to them to effect an escape, and The  
5 Court has their passports and driver's license. They have  
6 no personal immediate access to money of their own, which  
7 they could use to help facilitate in this case. And as The  
8 Court is aware, there is a substantial amount of family,  
9 parents, aunts, uncles, cousins and so forth that have been  
10 posted in this case for both defendants that are at risk  
11 and would be taken by this Court should they violate any  
12 material term of conditions of release. We think this  
13 window, this opportunity is reasonable.

14 I'm frankly pleading this on behalf of my client  
15 and his co-defendant's mental health as well as the  
16 goodness and benefit of the children as well. My client  
17 does not have a great deal by the way of formal education.  
18 Amera Akl does, and that's of great assistance to the  
19 children completing homework assignments and other matters.  
20 Frankly, Judge, as a high school student, he's somewhat  
21 lost, and helping him with some of the assignments he has  
22 in high school with regard to Advanced English. The young  
23 man is a good student, but he needs help. We think this is  
24 a reasonable accommodation which presents minimal risk of  
25 what the government fears, and we urge The Court to grant

1 it under these circumstances or under similar conditions.

2 THE COURT: Am I correct, though, that the two  
3 residents live relatively close, Your Honor?

4 MR. HELMICK: Yes, as the crow flies they're very  
5 close, but there's an expressway between the two, so  
6 practically speaking, it may be a mile between the two  
7 residents to get there in terms of streets. It doesn't  
8 take terribly long.

9 THE COURT: Why doesn't somebody pick the  
10 children up and take them over --

11 MR. HELMICK: Judge, they can, to the extent that  
12 we can spare another body or someone who might otherwise be  
13 a custodian. It's certainly possible to get them over  
14 there. The practical problem that presents for us is that  
15 Amera Akl's staying with her sister who has three children.

16 THE DEFENDANT: Five.

17 MR. HELMICK: Five children in a relatively small  
18 home. All things considered, where she's staying, it's a  
19 bit hectic and chaotic between the other children, her  
20 nieces' and nephews' schedule, getting them to practices,  
21 tutors and other things in the afternoon and early evening  
22 and also having a custodian present. It's tough.

23 THE COURT: She has her own soccer mom duties.

24 MR. HELMICK: That's exactly right. Soccer and  
25 other matters that make this logistically difficult. This

1 also gives a break to a primary custodian in her sister and  
2 her family during the afternoon and early evening to get  
3 those things done that they need to do with their family,  
4 which I'm sure include homework, soccer, as The Court  
5 mentions, or so forth, it gives that break or window or  
6 opportunity to everyone in the days and reduce some of the  
7 strain on the custodians, on her sister's household during  
8 that period of time. She would, of course, return there in  
9 the early evening and be there for the remainder of the  
10 night on electronic monitoring as she has been.

11 And again, Judge, as far as I know there haven't  
12 been any problems with arrangements that have been made and  
13 supervision that's occurred so far, but I defer to  
14 Mr. Miller on particulars.

15 THE COURT: So do I. Any problems or issues?

16 PROBATION OFFICER: Not at this time, no, Your  
17 Honor.

18 THE COURT: Have there been at all?

19 PROBATION OFFICER: No, Your Honor.

20 THE COURT: Sir.

21 MR. HERDMAN: Good morning, Your Honor. I will  
22 be brief as well. I guess Mr. Helmick did want to be heard  
23 on the motion. The government's position on this is we've  
24 tried to be consistent throughout. And, again, we're not  
25 insensitive to what I think is the fundamental issue here,

1 which is the needs of the Akl children. I'm a little  
2 concerned because I think in Mr. Schulman's motion that was  
3 filed, as well as Mr. Helmick's, I think what may be the  
4 overriding issue here is the notion of the custodians being  
5 overburdened or overtaxed. And again, I made this point  
6 with Mr. Schulman's motion, and I'll make it again. These  
7 custodians willingly agreed to serve in this capacity, took  
8 this responsibility on. And it seems that as the months  
9 have gone by, that they realized that this was a little  
10 bit -- they bit off a little bit more than they could chew,  
11 is what's going on here. And I'm not sure to the extent  
12 how much that custodial problem is driving this as opposed  
13 to the actual needs of the children. As far as the  
14 children are concerned, I will concede that there are some  
15 concerns that can probably be addressed through a court  
16 order. But the bottom line is this, the motion, I think,  
17 doesn't really address what it is that Mr. Helmick says the  
18 children need, which is they need access to their mother,  
19 both for help with their homework, scholastic assistance as  
20 well as just --

21 THE COURT: Maternal --

22 MR. HERDMAN: Exactly, Your Honor. So to that  
23 extent, they have contact with their father every day. As  
24 Mr. Helmick said, that residence, in terms of miles, is  
25 about a mile away. One of the alternatives that we had



1 suggested was that Mr. Akl could actually leave the  
2 residence for those five hours a day if that's, indeed, how  
3 much time is needed here. But there are other potential  
4 alternatives as well that I just, quite frankly, maybe  
5 don't have the creativity to think of. It seems like an  
6 incredibly generous amount of time to ask for, 25 hours a  
7 week seems like a lot of time to address these concerns. I  
8 also don't see the need for Mr. Akl to be present when  
9 Mrs. Akl is there to assist the children. And I also don't  
10 know if The Court's inclined to grant the motion wholesale  
11 or would consider some other alternative. I'm just not  
12 quite sure.

13 THE COURT: My mind is entirely open. That's why  
14 I had this session. I mean, this is not just a, you know,  
15 let's go through the motions, but by the way, guys, this is  
16 what I'm going to do. That's why I had you all come here.

17 MR. HERDMAN: But the government's fundamental  
18 concern has always been that the risk of flight increased  
19 substantially when Mr. Akl was released. That would allow  
20 both the defendants, I don't think there is a high  
21 likelihood of them fleeing. When Mr. Akl was released, I  
22 believe that risk of flight went up.

23 THE COURT: I would agree.

24 MR. HERDMAN: That would essentially make nullity  
25 of the previous motions, one of them would be that the

1 defendants have limited contact, and the fact that you  
2 reiterated that when you denied Amera Akl's motion to  
3 cohabitate with Hor. And in our position, this is  
4 essentially the same motion that's already been made, just  
5 maybe framed differently so that there's less time that  
6 they would actually come into contact. But if these  
7 defendants are serious about fleeing, five hours a day for  
8 five days a week, that's a significant amount of time for  
9 them to be able to plan, conspire, allowed to devise such a  
10 way that they could flee. And that remains a great concern  
11 to the government here. So we are -- we, again, we are not  
12 insensitive to the needs of the children, but I -- we're  
13 just trying to come up with sort of alternatives that would  
14 address those needs as well as The Court's concerns about  
15 the risk of flight that's increased here.

16 MR. HELMICK: May I respond briefly, Your Honor?  
17 Judge, first, this is not in any way driven by perceived  
18 hardship by the custodians in the case. They've been  
19 cooperative and generous with their time, and I don't  
20 believe I mentioned specifically at all in the motion, I  
21 mention in the overall scheme of things that that's  
22 secondary. The primary goal here, and I'll be blunt with  
23 The Court, is the emotional and mental health of my client,  
24 his wife and their children. And it extends beyond just  
25 getting their -- the children's mother time with her, it

1 includes him as well. We don't know how this case is going  
2 to end up. Both defendants face substantial prison  
3 sentences. But I would hate, at this point, to abandon the  
4 concept this was a close family and has been for many  
5 years. I understand why this disruption occurred and why  
6 it is necessary. All we're asking for is a reasonable  
7 accommodation for the children, for Mrs. Akl and for  
8 Mr. Akl, and, yes, I'm including him specifically because I  
9 think it's important that for a few hours a day, during the  
10 school days only, that they see their parents together.  
11 This is hard enough on a high school student who  
12 understands the nature of the charges they're facing. It  
13 is a mystery to the younger children as to why their  
14 parents are living apart. And that's not a criticism of  
15 the government's position or The Court's decision, it just  
16 is what it is. And it seems to me this is a reasonable  
17 request. And any attempt to flee, again, I go back to  
18 involves collusion with court-approved custodians, whether  
19 they're living apart or together, but I contend, Judge,  
20 that the risk is lower if we're simply talking about the  
21 afternoon into the early evening on monitoring with a  
22 court-approved monitor and not overnight.

23           And for those reasons, we think this request is  
24 reasonable, particularly given the time that's gone by  
25 since the release of both defendants.

1 THE COURT: Mr. Herdman, anything further?

2 MR. HERDMAN: I think I've said what I have to  
3 say.

4 THE COURT: I'm going to go ahead and grant the  
5 motion. I was inclined not to, quite candidly, but I think  
6 Mr. Helmick pointed out, are the custodians here?

7 MR. HELMICK: Many of them are, yes, Your Honor.

8 THE COURT: To some extent you are -- the risk  
9 that you have accepted is being increased, the government's  
10 correct. I constructed the conditions of release  
11 deliberately to limit, to the maximum extent possible, the  
12 ability to plan flight. I am increasing that risk  
13 somewhat, and you should understand that that being so, if  
14 you have any apprehensions that the consequences for you  
15 that a flight were to occur or efforts were undertaken to  
16 plan or prepare for flight or otherwise violate a material  
17 condition of release, that you don't have to continue to  
18 accept these responsibilities. Do you understand that?

19 CUSTODIAN: Yes.

20 THE COURT: The records should show at least four  
21 out of the five people nod their heads. Sir, are you one  
22 of the custodians, the gentleman on the far left?

23 CUSTODIAN: Yes.

24 THE COURT: Okay. One condition that I will  
25 impose, it occurs to me, is that, Mr. Helmick, if you will

1 obtain and provide a copy of this transcript, and I want  
2 each of the people who have either posted property or who  
3 are serving as a custodian, or in any other way have  
4 interests that could be adversely effected in the case,  
5 there were a declaration of forfeiture to sign off and say  
6 that they concur in this changed arrangement. And the  
7 change will not be implemented until that one sheet or  
8 multiple sheets, however you want to set it up is fine -- I  
9 assume that the government would not object to that aspect?

10 MR. HERDMAN: No, that would be fine. The only  
11 thing I ask if we can just make a record of the custodians  
12 that are present here in the courtroom.

13 THE COURT: That's probably a good opportunity to  
14 stand and state your full name for the record.

15 CUSTODIAN: Akram Mahmoud.

16 MR. HELMICK: And this is Amera's Akl's  
17 brother-in-law, so she resides in his home.

18 THE COURT: You've heard what I said, and you're  
19 willing to continue to help her out?

20 CUSTODIAN: Yes.

21 CUSTODIAN: Ali Joseph, I'm Amera's father. I  
22 understand what you said, Your Honor. I'm willing to do  
23 what has to be done.

24 CUSTODIAN: Akrum Mahmoud.

25 THE COURT: Did you hear what I said?

1 CUSTODIAN: Yes.

2 THE COURT: I saw you nod your head up and down.

3 CUSTODIAN: Attay Mahmoud, Amera's sister,  
4 understand everything that was said.

5 THE COURT: I saw you nod your head too.

6 MR. HELMICK: And Amera's mother.

7 CUSTODIAN: Najah Joseph, Amera's mom, and I  
8 understand everything you said.

9 THE COURT: Mr. Helmick, will you do the court  
10 reporter a favor of giving her the names?

11 MR. HELMICK: I will, Your Honor.

12 THE COURT: I would assume that it's not likely  
13 the government will appeal, but Mr. Herdman, I would ask  
14 that if you decide to do so, let me and counsel know  
15 promptly so we know things that will be proceeding.

16 MR. HELMICK: Just so I'm clear, Your Honor, I  
17 gather you would like to do a letter of instruction and  
18 explanation as well as a copy of today's transcript?

19 THE COURT: If you don't want -- I was thinking  
20 of the transcript because I hope maybe Angela will put the  
21 periods in where they belong. The main thing is I don't  
22 want somebody, if there is a problem, and Lord knows I hope  
23 there isn't. Candidly, I don't think there's going to be a  
24 problem. On the other hand, I think the government's  
25 concerns, which I do share, I think I have to share, and I

1 have to respond to those, that if worse comes to worse, I  
2 do not want to, but have the ability to levy upon the  
3 property or to issue show cause orders against custodians  
4 and who may appear to have been at fault or in any other  
5 way to be confronted in an effort to impose sanctions as a  
6 result of the forfeiture -- oops, wait a minute, you  
7 changed things material to me, if I'd known about it, I  
8 wouldn't have hung around.

9 MR. HELMICK: Fair enough, Your Honor.

10 THE COURT: So whatever you want to talk to Mr.  
11 Herdman, whatever seems to work so that there's a  
12 confirmation of the continued willingness to maintain  
13 whatever circumstances may be with regard to each of the  
14 people who are signatories to these obligations.

15 MR. HERDMAN: Your Honor, I think that's an  
16 important point with respect to the surers, I think the  
17 only thing I would ask, would this order go into effect  
18 before those surers are notified?

19 THE COURT: No, I want them to sign off first.

20 MR. HELMICK: May I offer this as a possibility,  
21 if I were to have a conversation personally with each of  
22 them to explain what occurred today and then filed  
23 something with the court?

24 THE COURT: I'd rather have it signed off on. Is  
25 there a problem in that regard? If the people are not

1 available --

2 MR. HELMICK: I'm not sure or not.

3 THE COURT: If that's a problem, talk to Mr.  
4 Herdman and let me know. I don't want that to get in the  
5 way. I'll see --

6 MR. HELMICK: I don't anticipate a problem.

7 THE COURT: No, but if somebody's out of the  
8 country or whatever, they're probably accessible by e-mail  
9 or your representation pending their return. That's fine.  
10 But I don't want -- although I know full well you would  
11 fulfill that obligation thoroughly, none the less, I want  
12 the individuals to sign off.

13 MR. HELMICK: Understood, Judge. Thank you.

14 THE COURT: Anything further from the government?

15 MR. HERDMAN: No, Your Honor. Thank you.

16 THE COURT: Mr. Schulman?

17 MR. SCHULMAN: No, Your Honor.

18 THE COURT: That will conclude this proceeding.

19 MR. HELMICK: Thank you, Judge.  
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C E R T I F I C A T E

I certify that the foregoing is a correct transcript  
from the record of proceedings in the above-entitled matter.

s:/Angela D. Nixon

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Angela D. Nixon, RPR, CRR

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Date